**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928**

**Crl.Rev.Pet.No. 522 of 2007()**

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**CRA.220/2006 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA**
**ST.929/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IDUKKI**

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**REVN. PETITIONER: APPELLANT/ACCUSED.**

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**JOSE VARKEY, S/O.VARKEY,**
**KOVUMKOTTIL HOUSE,**
**THANKAMANI KARA, THANKAMANI P.O.,**
**IDUKKI.**

**BY ADV. SRI.S.SACHITHANANDA PAI**

**RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE.**

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**1. SUNNY MATHEW, KALAPURACKAL HOUSE,**
**THANKAMANI, IDUKKI.**

**2. STATE OF KERALA, REPRESENTED BY THE**
**PUBLIC PROSECUTOR, HIGH COURT OF KERALA,**
**ERNAKULAM.**

**BY PUBLIC PROSECUTOR SRI.KAMMAPPU FOR R2.**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**K.PADMANABHAN NAIR .J**

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**Crl.R.P No.522 OF 2007**

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**Dated this the 6th day of February 2007**

**ORDER**

The accused in S.T No.929/2005 on the file of the Judicial First Class Magistrate Court, Idukki is the revision petitioner. He was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act convicted and sentenced to undergo simple imprisonment for three months and to pay compensation of Rs. 20,000/- and in default to undergo simple imprisonment for one more month. Challenging the conviction and sentence the petitioner filed Criminal Appeal No. 220/2006 before the Additional District & sessions Court (Adhoc-I) Thodupuzha . The learned Sessions judge concurred with the findings of the Magistrate and dismissed the Crl.Appeal. Challenging those concurrent findings this Crl.R.P is filed.

2. The respondent filed a complaint alleging that the petitioner borrowed an amount of Rs. 20,000/- from him and when he demanded repayment of the same the petitioner issued Ext.P1 cheque . It was further alleged when the cheque was presented for collection it was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the bank. Notice was issued. The petitioner did not repay the amount. Hence the complaint.

3. The respondent gave evidence as PW1. He gave evidence to the effect that the cheque was issued in discharge of a legally recoverable debt. Though the revision petitioner denied the entire prosecution case he has not adduced any evidence. He has not offered any explanation as to how a cheque which contained his signature reached the hands of the respondent. So the finding of the Courts below that Ext.P1 cheque was issued in discharge of a legally recoverable debt is correct and is only to be confirmed. The evidence shows that when the cheque was presented for collection it was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the bank. On receipt of the dishonour memo the respondent issued statutory notice demanding repayment of the amount. The amount was not repaid. The complaint was filed after observing all statutory formalities. So the finding of the courts below that the petitioner was guilty of an offence punishable under Section 138 of the Negotiable Instruments Act is only to be confirmed.

4. The learned counsel appearing for the petitioner argued that the sentence imposed is highly excessive and disproportionate. After considering all aspects of the matter I am of the opinion that the substantive sentence imposed can be modified and reduced to

imprisonment till the rising of the Court. I do not find any reason to interfere with the compensation awarded and the default sentence, but the petitioner can be given four months time from today to pay the compensation and to appear and receive the sentence

5. In the result, CrlR.P is disposed of in the following manner. The finding of the courts below that the petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is confirmed. The sentence imposed is modified and reduced to imprisonment till the rising of court. The compensation awarded and the default sentence imposed are confirmed. But the petitioner is given four months time from today to pay off the compensation and to appear and receive the substantive sentence. If the petitioner fails to comply with the condition it is open to the Magistrate to execute the sentence after the expiry of the period of four months.

**K.PADMANABHAN NAIR,JUDGE**

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